



Citizens Utility Board of Wisconsin, Inc.
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Public Service Commission of Wisconsin
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March 7, 2022

VIA ERF

Ms. Steffany Powell Coker
Secretary to the Public Service Commission of Wisconsin
4822 Madison Yards Way
Madison, WI 53705

Re: Revocation of the Federal Permit for the Cardinal-Hickory Creek Transmission Project,
Docket No. 5-CE-146

Dear Secretary Coker:

The Citizens Utility Board (CUB) writes, in response to the letter from the Midcontinent Independent System Operator, Inc. (MISO) dated February 16, 2022 (MISO Letter) and the letter from American Transmission Company LLC (ATC), ITC Midwest LLC (ITC), and Dairyland Power Cooperative (Dairyland) (collectively, “the Utilities”) dated February 21, 2022 (Utilities’ Letter), to ask the Commission to take action regarding the Utilities’ ongoing construction activities in Wisconsin related to the Cardinal-Hickory Creek Transmission Line Project (“CHC” or “the Project”), docket number 5-CE-146. CUB requests that the Commission immediately pause construction on the Project and reopen the docket to consider under what conditions the Project may continue. In this matter, time is a critical factor.

I. Background

On January 14, 2022, Judge William Conley of the U.S. District Court for the Western District of Wisconsin issued an opinion and order rescinding the compatibility determination that U.S. Fish and Wildlife Service granted the Utilities to construct CHC through the Upper Mississippi River National Wildlife and Fish Refuge (the refuge).¹ This order “preclude[d] the CHC transmission line from crossing the refuge by right of way or land transfer.”² The Utilities took no action before the Commission in response to this order.

On January 28, 2022, CUB requested that the Commission protect Wisconsin customers by issuing an order under Wis. Stat. § 196.39(1) to rescind, alter, or amend the *Final Decision* granting the Utilities the Certificate of Public Convenience and Necessity (CPCN) for the Project. This would halt construction activities on the Wisconsin portion of the Project until a legal and viable route from Iowa to Wisconsin is determined. Then and now, CUB does not address the merits of the original CPCN application, which is the subject of litigation before the Dane County Circuit Court. Rather, CUB’s concern is one of temporal prudence, and whether the Utilities’ rush to complete the project is reasonable given uncertainties that now exist over the Project’s future.

On March 1, 2022, Judge Conley issued a 2-page Final Judgment consistent with the January 14 opinion

¹ *Nat’l Wildlife Refuge Ass’n et. al v. Rural Utilities Serv. Et. al.*, No. 21-CV-096-WMC (W.D. Wis. Jan. 14, 2022).

² *Nat’l Wildlife Refuge*, No. 21-CV-096-WMC at 44.

and order.³ A copy of the Final Judgment is included as Attachment 1.

- II. Without a connection between Iowa and Wisconsin, the project cannot deliver the expected benefits to Wisconsin customers.

The Utilities note in their February 21 letter to the Commission, and CUB acknowledges, that this ruling affects “[l]ess than 1.5 miles of the Project’s approximately 100-mile route.”⁴ However, the conclusion that because the Mississippi River crossing segment is a small proportion of the overall line length “the federal court’s order has no impact on the vast majority of the Project being constructed”⁵ is false.

As the Utilities know, the sole function of transmission facilities is electrical connectivity. A break in a line, whether the length of the break represents a large proportion or a tiny fraction of the total line length, negates connectivity. This is why extraordinary resources go into maintaining every inch of right-of-way along power lines.

In fact, the U.S. District Court’s decision affecting “[l]ess than 1.5 miles” represents a significant break in a line that cannot function as intended with as much as a one-inch disconnect. Thus the Final Judgment impacts the *entire* Project. That is, with no connection between Iowa and Wisconsin, the Project can transfer zero megawatts of power between Iowa and Wisconsin. Since the Project can no longer “support interconnection of planned renewable generation projects in Wisconsin,”⁶ it can no longer provide the benefits to Wisconsin customers that were presented in the CPCN application and relied upon by the Commission in the *Final Decision*.

- III. Without the expected benefits, construction is not cost-effective and not consistent with the public interest.

It has been over six weeks since the refuge crossing was declared illegal. During this time, the Utilities might have requested a minor route adjustment before the Commission. They might have otherwise presented a viable and legal alternative to construction with speculative benefits. In the least, they might have temporarily halted construction,⁷ indicating their good faith commitment to delivering the expected

³ MISO is mistaken that CUB made a “major presumption” of finality of the January 14 opinion and order. See MISO Letter at 1.

⁴ Utilities’ Letter at 4.

⁵ *Id.* at 1.

⁶ *In re Application of American Transmission Company LLC, ITC Midwest LLC, and Dairyland Power Cooperative*, Docket No. 5-CE-146, *Final Decision* (Sept. 26, 2019) at 30 (PSC REF#: 376391) [hereinafter “*Final Decision*”].

⁷ The Commission’s *Final Decision* recognized the possibility, in a project of this “complexity and scope,” of the very situation before us and explicitly provided a mechanism for stopping construction “if the work would violate this *Final Decision* or any regulatory permit condition. See *Final Decision* at 61. (“[B]ecause of the complexity and scope of the project, it is reasonable to employ an independent construction monitor (a combined IEM/IAM) during the construction phase of the approved project. . . The IEM/IAM will report to and consult with the Commission to ensure the applicants adhere to this *Final Decision* and all permits. . . The IEM would have the authority to stop work on any construction spread if the work would violate this *Final Decision* or any regulatory permit condition. The applicants and their contractors shall promptly stop work on a construction spread if directed to do so by the IEM.”) Thus stopping construction cannot be outside of the Utilities’ contemplation, and in fact the Commission noticed them of such a possibility.

benefits at the approved costs.

Any good faith action at all before the Commission in response to the compatibility determination might demonstrate the Utilities' willingness to act with prudence and consistent with the public interest. Instead, the Utilities ask the Commission to turn a blind eye to the compatibility determination rescission.⁸ They speculate as to possible "changes in the posture of that litigation in the near term"⁹ and note that they "believe they will be able to electrically connect the Project's two proposed endpoints."¹⁰ The Utilities ask the Commission to act on their hope that a legal solution will be found that will allow the Project to proceed. Hope is not a plan. This relaxed approach on the part of the Utilities, who stand to profit from ongoing construction activities, benefits shareholders, not Wisconsin customers.

As the court wrote over six weeks ago:

*the Utilities are pushing forward with construction on either side of the Refuge, even without an approved path through the Refuge, in order to make any subsequent challenge to a Refuge crossing extremely prejudicial to their sunk investment, which will fall on their ratepayers regardless of completion of the CHC project, along with a guaranteed return on the Utilities' investment in the project.*¹¹

Without a regulatory solution, Wisconsin customers will bear the costs¹² of the Utilities' ongoing construction of a line with questionable benefits. If a viable and legal alternative to the originally-proposed route through the refuge exists, the Utilities should present that alternative for the Commission's (and the public's) consideration. In the meantime, construction grounded in the Utilities' speculation should stop.

IV. The Commission should not allow construction to continue.

CUB continues to believe that it is well within the Commission's authority under Wis. Stats. §§ 196.02 and 196.39(1) to rescind, alter, or amend its *Final Decision* granting the Utilities a CPCN and to reopen Docket No. 5-CE-146 to consider under what conditions the Project may move forward. At a minimum, under Wis. Stat. § 196.02, the Commission should halt construction unless and until a route is approved. Quick action is necessary to protect the customers whom CUB represents and for whom the Commission is charged with ensuring safe, reliable, environmentally-responsible, and cost-effective utility services. Each day that construction of the line continues, the costs that the Utilities incur grow while the benefits remain in question. Time is a critical factor in mitigating unnecessary, inefficient, or otherwise wasteful

⁸ See Utilities' Letter.

⁹ *Id.* at 4.

¹⁰ *Id.* at 5.


¹¹ *Nat'l Wildlife Refuge*, No. 21-CV-096-WMC at 6.

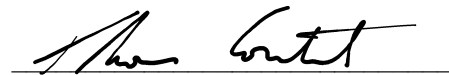
¹² Where costs are concerned, CUB notes that MISO has declared that the lack of a plan to connect Iowa to Wisconsin does not threaten CHC's Multi-Value Project (MVP) status and thus it remains the case that "CHC Project costs are subject to the regional cost spreading provisions contained in the MISO Tariff." MISO Letter at 2. CUB welcomes this declaration. However, MISO's letter does not address CUB's underlying concern with the reduction in expected benefits (due to the lack of a route from Iowa to Wisconsin) that significantly shifts the overall cost-benefit analysis of the Project. Nor does MISO opine as to whether or not the description of the "CHC Project" under which MVP status was granted requires revision to reflect the changes to the originally-proposed Project.

expenditures.

For the above-stated reasons, and for the reasons set forth in CUB's January 28, 2022 letter to the Commission, CUB requests that the Commission immediately halt all construction activities on the Wisconsin portion of the CHC line and reopen Docket No. 5-CE-146 so as to consider the limited issue of CHC routing from Iowa to Wisconsin.

Respectfully,



Cara Coburn Faris
CUB General Counsel

Thomas Content
CUB Executive Director

Cc: Parties (via electronic mail)

Attachment 1

Nat'l Wildlife Refuge Ass'n et. al v. Rural Utilities Serv. Et. al., No. 21-CV-096-WMC (W.D. Wis. March 1, 2022).

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

NATIONAL WILDLIFE REGUGE ASSOCIATION,
DRIFTLESS AREA LAND CONSERVANCY, WISCONSIN
WILDLIFE FEDERATION, and DEFENDERS OF WILDLIFE

Plaintiffs,

v.

21-cv-096-wmc & 21-cv-306-wmc,
Consolidated

RURAL UTILITIES SERVICE,
CHRISTOPHER MCLEAN, Acting Administrator,
Rural Utilities Service,
UNITED STATES FISH AND WILDLIFE SERVICE,
CHARLES WOOLEY, Midwest Regional Director, and
SABRINA CHANDLER, Manager, Upper Mississippi River
National Wildlife and Fish Refuge,
UNITED STATES ARMY CORPS OF ENGINEERS,
LIEUTENANT GENERAL SCOTT A. SPELLMON, Chief of
Engineers and Commanding General, U.S. Army Corps of
Engineers, COLONEL STEVEN SATTINGER, Commander
And District Engineer, Rock Island District, U.S. Army Corps of
Engineers, and COLONEL KARL JANSEN, Commander and
District Engineer, St. Paul District, U.S. Army Corps of Engineers,

Defendants,

and

AMERICAN TRANSMISSION COMPANY, LLC,
DAIRYLAND POWER COOPERATIVE, & ITC
MIDWEST LLC,

Intervenor-Defendants.

FINAL JUDGMENT

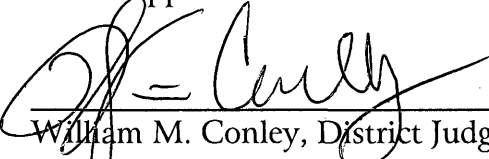
IT IS ORDERED AND ADJUDGED that

In Case No. 21-cv-96, the court enters judgment in favor of plaintiffs and against federal defendants and intervenor-defendants as follows:

1. The Record of Decision issued by the Rural Utilities Service effective January 16, 2020, is VACATED AND REMANDED to the Rural Utilities Service for further proceedings consistent with the court's January 12, 2022, Opinion and Order on summary judgment (dkt. #175).
2. The court DECLARES that the compatibility determination precludes the CHC transmission line as currently proposed from crossing the refuge by right of way or land transfer.
3. The court VACATES AND REMANDS the defendants' Environmental Impact Statement and Records of Decision consistent with the court's January 12, 2022, Opinion and Order on summary judgment (dkt. #175).

In Case No. 21-cv-306, judgment is entered in favor of federal defendants and intervenor-defendants and against plaintiffs on Counts 1, 2, 3, and 5, which are DISMISSED WITH PREJUDICE. Judgment is entered in favor of plaintiffs and against federal defendants and intervenor-defendants on Count 4 as set forth above.

Approved as to form this 1st day of March, 2022.



William M. Conley, District Judge



Peter Oppeneer, Clerk of Court

3/1/22
Date